

01 Respondent asserts that petitioner's detention, therefore, remains lawful because he has
02 received all of the benefits of due process to which he is entitled.

03 For the reasons set forth below, the Court recommends that petitioner's habeas petition
04 be DENIED, respondent's motion to dismiss be GRANTED, and this matter be DISMISSED
05 with prejudice.

06 II. BACKGROUND AND PROCEDURAL HISTORY

07 Petitioner is a native and citizen of Mexico who entered the United States without
08 inspection or admission by an immigration officer in approximately 1994. (Administrative
09 Record ("AR") R99, R16-18.) In 2003, he was convicted of possession of a controlled
10 substance and sentenced to juvenile hall. (AR 90.) In addition, he was convicted of reckless
11 driving due to alcohol and sentenced to 18 months probation in 2007. *Id.*

12 In November 2011, ICE officials encountered petitioner at the Yakima County Jail
13 following his arrest for driving under the influence. (AR R90.) On November 25, 2011, ICE
14 served petitioner with a Notice to Appear, charging him with removability under INA §
15 212(a)(6)(A)(i), for being present in the United States without being admitted or paroled. (AR
16 L5-6.)

17 On December 28, 2011, ICE arrested petitioner and transferred him to the Northwest
18 Detention Center. (AR L4.) ICE made an initial custody determination and ordered that
19 petitioner remain detained pending his removal proceedings. (AR L3.) Petitioner requested a
20 redetermination of this custody decision by an immigration judge. (AR L7.) On March 7,
21 2012, an immigration judge ordered that petitioner's request for a change in custody status be
22 denied. (AR L21, L72.) On April 19, 2012, the immigration judge issued a memorandum

01 decision, finding as follows:

02 Based on the evidence of record, the Court finds that [petitioner] represents a
03 danger to the community. He has two alcohol related arrest[s] within the last five
04 years, [and] a pending domestic violence [charge]. [Petitioner] acknowledged that
he cannot return home since the criminal court established a protective order.

05 The Court is mindful of [petitioner's] family ties and potential relief from removal.
06 However, his criminal record includes two alcohol related driving offenses, a drug
07 conviction as a juvenile and the pending domestic violence charge. His behavior
demonstrates a pattern of disregard for the safety of the community over a period of
years. [Petitioner's] continued disregard for the laws of the United States
demonstrates he represents a danger to the community.

08 (AR L99.) Petitioner appealed the immigration judge's bond decision to the Board of
09 Immigration Appeals ("BIA"), which affirmed the immigration judge's decision and dismissed
10 the appeal on June 27, 2012. (AR L130-31.)

11 On August 8, 2012, petitioner moved the immigration court to advance the date of his
12 removal hearing to request voluntary departure. (AR L129, L135.) The Department of
13 Homeland Security did not oppose the motion, and the immigration judge granted petitioner's
14 motion. (Dkt. 10, Ex. A.) A master calendar hearing was scheduled before an immigration
15 judge for October 4, 2012, but the present record does not indicate if that hearing was held.
16 (Dkt. 10, Ex. A.)

17 III. DISCUSSION

18 Section 236(a) of the INA, 8 U.S.C. § 1226(a), provides the framework for the arrest,
19 detention, and release of aliens while removal proceedings are pending before the immigration
20 judge or the BIA. That provision provides the Attorney General with discretionary authority
21 to release an alien on bond or conditional parole pending the completion of removal
22 proceedings. *See* INA § 236(a), 8 U.S.C. § 1226(a). Section 236(a) provides, in part, as

01 follows:

02 On a Warrant issued by the Attorney General, an alien may be arrested and detained
03 pending a decision on whether the alien is to be removed from the United States.
04 Except as provided in subsection (c) of this section and pending such decision, the
05 Attorney General –

06 (1) may continue to detain the arrested alien; and

07 (2) may release the alien on –

08 (A) bond of at least \$1,500 with security approved by, and
09 containing conditions prescribed by, the Attorney General; or
10 (B) conditional parole . . .

11 INA § 236(a), 8 U.S.C. § 1226(a).

12 The custody procedures are set forth in the regulations. *See* 8 C.F.R. § 236.1(d).
13 Under the regulations, ICE is authorized to make an initial custody determination, including the
14 setting of bond. *See id.* After an initial custody determination, an alien may request a bond
15 redetermination hearing before an immigration judge. *See id.* In addition, the alien may
16 appeal the immigration judge's bond decision to the BIA. *See id.*

17 Here, the administrative record shows that petitioner received a bond redetermination
18 hearing before an immigration judge who determined that petitioner should remain detained
19 without bond while removal proceedings are pending. (AR L72, L99.) In addition, petitioner
20 exercised his right to appeal the IJ's bond decision to the BIA, which agreed with the
21 immigration judge's conclusion that petitioner should be held without bond. (AR L130-31.)
22 The Court, therefore, concludes that petitioner's detention remains lawful because he has
received all of the benefits of due process to which he is entitled.

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IV. CONCLUSION

For the foregoing reasons, the Court recommends that petitioner's habeas petition be DENIED, respondent's motion to dismiss be GRANTED, and this matter be DISMISSED with prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 19th day of November, 2012.



Mary Alice Theiler
United States Magistrate Judge